

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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|--------------------------|---|---------------------|
| UNITED STATES OF AMERICA |) | |
| |) | CRIMINAL ACTION NO. |
| v. |) | 2:20cr085-MHT |
| |) | (WO) |
| DIEGO FAGUNDEZ |) | |

ORDER

This cause is before the court on the government's motion to continue the trial generally. For the reasons set forth below, the court finds that jury selection and trial, now set for October 31, 2022, should be continued pursuant to 18 U.S.C. § 3161.

While the granting of a continuance is left to the sound discretion of the trial judge, *see United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in

which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period "[a]ny period of delay resulting from the absence or unavailability of the defendant or an essential witness," § 3161(h)(3)(A), and explains that "a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence." § 3161(h)(3)(B).

The court finds that a continuance is warranted due to the absence or unavailability of defendant Diego Fagundez. As the government explains in its motion, Fagundez failed to appear for trial on August 9, 2022. At that point, a warrant had already been issued for his arrest after he allegedly violated the conditions of his pretrial release. He still has not been arrested, and his whereabouts are unknown. For these

reasons, and pursuant to § 3161(h)(3)(B), the court finds that Fagundez's whereabouts are unknown and that he is attempting to avoid apprehension or prosecution. The court further finds that, for these reasons, in this case the ends of justice served by granting a continuance outweigh the interest of the public and Fagundez in a speedy trial. Defense counsel does not oppose the motion to continue.

Accordingly, it is ORDERED as follows:

(1) The motion to continue trial (Doc. 437) is granted.

(2) The jury selection and trial, now set for October 31, 2022, are continued generally pending the arrest of defendant Diego Fagundez.

DONE, this the 12th day of October, 2022.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE